

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 005

June 27, 1958

PENALTIES: WITH RESPECT TO DECEDENTS

Syllabus:

Delinquency, negligence, and fraud penalties survive the death of a taxpayer and are assessable against his estate.

Advice is requested regarding the survivability of delinquency, negligence and fraud penalties, and the assessment thereof against the estates of deceased taxpayers.

Judicial decisions involving decedents have held that fraud penalties are remedial; i.e., that their primary purpose is to provide a safeguard for the protection of the revenue and reimburse the government for the heavy expense of investigation and loss resulting from taxpayers fraud, the wrongful act being an injury to the property of the United States. In these cases the assessments including the fraud penalties were made after the death of the taxpayer, and covered taxable years which would under the normal statute of limitations have been barred. Commissioner v Mitchell, 303 U.S. 391 furnished the principal support for these decisions and it is noted that the Mitchell case placed delinquency and negligence penalties in the same category as fraud penalties insofar as survivability is concerned. Both the California and Federal laws were founded on the common law insofar as they pertain to the survivability of such remedial actions. Although there have been certain statutory modifications, the California statutes have tended toward an expansion rather than a limitation of the survivability of actions. It seems clear that said decisions would be equally applicable inasmuch as they applied the common law doctrines. The various penalty provisions in the Personal Income Tax Law (aside from criminal penalties) survive the death of the taxpayer and are assessable against his estate.